PERWIRA HABIB BANK (M) BHD.

v.

LIM HONG TATT

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CODE NO. C3-23-4296-86]
16 SEPTEMBER 1988

BANKING: *Overdraft facility - Whether limit of facilities includes interest - Whether compound interest chargeable - Whether interest can be increased - Monthly statement sent - Defendant did not question - Effect of.*

The defendant was granted an overdraft facility by the plaintiff which overdraft was to the limit of RM750,000 with interest at 14.5% per annum. Such interest to be calculated on the daily amount outstanding and payable monthly.

The defendant raised the following issues:

i) whether the limit of RM750,000 included interest; if interest is included then the plaintiff cannot claim more than RM750,000.

ii) whether the plaintiff can charge compound interest; and

iii) whether the plaintiff had power to increase the rate of interest after the facility was terminated.

Judgment was given for the plaintiff and the defendant appealed to the Judge in chambers.

Held:

[1] The limit of the facility can only mean maximum principal sum sanctioned on which interest at the agreed rate shall be paid.

[2] The plaintiffs are therefore entitled to claim for more than RM750,000; the excess being the interest chargeable.

[3] As it was a term of the agreement the plaintiffs were also entitled to charge compound interest.

[4] The defendant since he did not question any of the monthly statements sent to him cannot now question his liability to pay the sum due.

[5] Interest at 16.5% per annum after 1 October 1986 cannot be allowed as the letter of approval of the overdraft facility did not make provision for increase of interest - (this being an arbitrary act on the plaintiff's part) is not allowed.

[Appeal allowed in part.]

For the defendant/appellant - G. Krishnan; M/s. Krishnan & Co.
For the plaintiff/respondents - Mazlinda Makhzan; M/s. Ng Yook Woon, Andrew T.C. Saw & Co.

JUDGMENT

Siti Norma Yaakob J:

In his appeal against an O. 14 summary judgment, the defendant raised the following issues.

1) does the limit of RM750,000 overdraft facility provided by the plaintiffs include interest as well;

2) if so, the plaintiffs are not entitled to claim more than RM750,000;

3) whether the plaintiffs can charge compound interest;

4) whether the plaintiffs have any power to increase the rate of interest after the facility was terminated on 5 May 1986.

As a customer of the plaintiffs, the defendant was granted an overdraft facility on terms and conditions contained in the plaintiffs' letter dated 12 January 1983. The limit of the overdraft is RM750,000 with interest chargeable at 14.5% per annum. Another condition attached to the interest payable is that such interest shall be calculated on the daily outstanding amount and payable monthly.

The limit of the facility can only mean the maximum principal sum sanctioned by the overdraft on which interest at the rate agreed shall be levied. In this case the sanctioned limit is RM750,000 at which interest at 14.5% per annum will be chargeable. To assume that the RM750,000 limit includes interest as well would be contrary to logic and sound business practice, as the facility is a business transaction conducted by the plaintiffs in the course of their business as banker. As such it is not logical to expect the plaintiffs to advance money up to the sanctioned limit on an interest free basis. The plaintiffs are therefore entitled to claim more than RM750,000 and the excess of the limit represents the interest chargeable on the facility.

As for the plaintiffs charging compound interest on the facility, they have every right to do so, as that was a term agreed between them and contained in the plaintiff's letter of approval dated 12 January 1983 under Condition F.

In the same letter of approval, 31 December 1983 has been stated to be the revision date. Although no evidence was led as to what happened after that date, letters written by the plaintiffs addressed to the defendant all point to the plaintiffs continuing the facility without interruption. The defendant had also not questioned any of the monthly statements submitted to him and by this conduct, he cannot now question his liability to pay for the sum now claimed by the plaintiffs.

From the statement of the defendant's account kept by the plaintiffs, a sum of RM864,166.72 is due and owing from the plaintiffs as at 30 September 1986. This represents the principal and interest at the rate of 14.5% per annum. However, as from 1 October 1986, the plaintiffs have also claimed an increased rate of interest at 16.5% per annum and notice of this increase is contained in their letter dated 5 May 1986 recalling the facility. Since the letter of approval does not make any provision for any increase in the rate of interest, it would appear that the increase was an arbitrary act on the part of the plaintiffs and should not be allowed. To that extent in dismissing the defendant's appeal with costs, the judgment to be entered against him should only be for the amount as stated in prayer (1) of the plaintiffs' statement of claim, with interest on the decretal sum at 8% per annum from date of judgment to date of realisation and costs.

Also found at [1989] 1 CLJ 54